

FINAL STATEMENT OF REASONS AND PUBLIC REPORT
DEPARTMENT OF PESTICIDE REGULATION

Title 3. California Code of Regulations
Amend Section 6800(b)
Pertaining to Groundwater Protection List

UPDATE OF THE INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9(d), the Department of Pesticide Regulation (DPR) incorporates by reference the Initial Statement of Reasons prepared for this rulemaking.

No changes were made to the proposed regulations nor are any changes necessary to the Initial Statement of Reasons following the 45-day public comment period.

The originally proposed regulatory action was noticed in the California Regulatory Notice Register on November 21, 2008. During the 45-day public comment period, DPR received comments on the proposed text. The comments are discussed under the heading “Summary and Response to Comments Received” of this Final Statement of Reasons.

DPR has amended section 6800(b) of Title 3, California Code of Regulations (3 CCR). This action updates the list of pesticides that have the potential to pollute ground water in California. The Pesticide Contamination Prevention Act (Act) (Statutes of 1985, Chapter 1298, section 1) added sections 13141 through 13152 to the Food and Agricultural Code (FAC). The purpose of the Act is to prevent pesticide pollution of California's ground water aquifers that may be used for drinking water supplies.

The following 40 pesticidal chemicals were added to section 6800(b): azoxystrobin; bensulfuron methyl; bispyribac-sodium; clomazone; 2,4-D, 2-ethylhexyl ester; 2,4-D, diethanolamine salt; 2,4-D, isooctyl ester; 2,4-DP-P, dimethylamine salt (dichlorprop-P, dimethylamine salt); dicamba, diglycolamine salt; dicamba, dimethylamine salt; dicamba, sodium salt; diflufenzopyr, sodium salt; dimethenamid-P; dinotefuran; dithiopyr; endothall, dipotassium salt; endothall, mono (N,N-dimethyl alkylamine) salt; fenoxycarb; fludioxonil; flutolanil; halosulfuron-methyl; imazamox, ammonium salt; imazapic, ammonium salt; imazethapyr, ammonium salt; malathion; mefenoxam; methyl parathion; (S)-metolachlor; penoxsulam; piperonyl butoxide; propanil; siduron; terrazole; thiamethoxam; thiazopyr; thiobencarb; thiophanate methyl; triclopyr, butoxyethyl ester; triclopyr, triethylamine salt; and uniconazole-P.

DPR identified one pesticide chemical, acrolein, that no longer meets the criteria for inclusion into section 6800(b) because its re-determined value for anaerobic soil metabolism no longer exceeds the SNV. Thus none of acrolein's persistence values exceeds the corresponding SNVs. This action deleted acrolein from section 6800(b).

DPR also changed the current listing of fosetyl-al technical to fosetyl-al, and included a common synonym for fosetyl-al found on pesticide labels, aluminum tris, in parentheses. The Act requires

registrants to submit physicochemical and environmental fate characteristic data only for products registered for agricultural use. Fosetyl-al technical was registered for manufacturing use only. Fosetyl-al is contained in products registered for agricultural use.

PUBLIC HEARING

A public hearing was not scheduled or held.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED

Comments Received During the 45-Day Public Comment Period

During the 45-day public comment period, DPR received four comments regarding the proposed text. They were submitted by C. M. Schofield, Consultant to 2,4-DP-p Task Force (commentor #1); G. Fred Lee, G. Fred Lee and Associates (commentor #2); and Larry E. Hammond, Chairman of Technical Committee, Industry Task Force II on 2,4-D Research Data (commentor #3), and an individual identified only as Teresa (commentor #4).

Comment No. 1 (commentor #1): If data from a higher tier field dissipation study conducted under actual use conditions demonstrates there is little potential for a compound to reach the groundwater, such as in the case of dichlorprop-p applied to turf, greater consideration should be given to these results before inclusion of a compound on the Groundwater Protection List. We concur with the July 20, 2001, Pesticide Evaluation Report from the California Department of Pesticide Regulation to Riverdale Chemical Company in response to a label amendment for a product containing dichlorprop-p, which stated "...the rapid aerobic soil metabolism of dichlorprop-p would tend to mitigate its potential to leach. During the course of the field dissipation studies, dichlorprop-p was observed to move to a maximum depth of 30 inches and dissipate very quickly," and therefore do not believe it is appropriate to amend section 6800(b) to include dichlorprop-p.

Response: FAC section 13144 does not allow DPR to give greater consideration to "higher tier field dissipation" studies in identifying pesticides with the potential to pollute ground water. Rather the law specifies that if any of the SNVs are exceeded in the persistence category (hydrolysis half-life, aerobic or anaerobic soil metabolism half-life, all of which are described as "lower tier" by the commentor, or field dissipation, which is described as "higher tier" by the commentor) and any of the SNVs are exceeded in the mobility category (water solubility or soil adsorption coefficient), the pesticide is then screened for label language to see if it qualifies for listing in section 6800(b). This rulemaking did not propose to change the method DPR uses to identify potential leachers because that would require a change in statute (FAC section 13144).

DPR does use the "higher tier" field dissipation and other data to prioritize pesticides listed in section 6800(b) for monitoring in ground water, and to determine whether or not a pesticide

should be registered based on its likelihood to contaminate ground water. The use of “higher tier” field dissipation in the decision of whether or not to register a pesticide is what was addressed in the July 20, 2001, Pesticide Evaluation Report from DPR to Riverdale Chemical Company in response to a proposed label amendment for a product containing dichlorprop-p, cited by the commentor.

Comment No. 2 (commentor #2): DPR has proposed revisions of Ground Water Pesticide Contamination Prevention Regulations to improve the protection of the state’s groundwaters from pollution by pesticides. As individuals who have substantial technical expertise in, and great concern for, improving the protection of California’s groundwaters, we strongly support the proposed revisions in the regulations.

Response: No response necessary.

Comment No. 3 (commentor # 3): The higher tier component of the DPR criteria, field dissipation studies, should carry a much greater weight in DPR’s evaluation for potential ground water contamination because they represent actual environmental conditions. Thirty field dissipation studies completed in the 1990s for 2,4-D have been reviewed by EPA and considered acceptable for reregistration. Those studies were conducted at higher label rates per acre that are allowed by current labels. In addition since 1984 there have been no detections of 2,4-D in drinking water wells tested down to 10 ppb. Therefore we respectfully request that the 2,4-D forms identified on the Groundwater Protection List in the CDPR “Notice of Proposed Regulatory Action” to amend section 6800(b) be removed, and that the current listed of 2,4-D dimethylamine salt be removed from the list.

Response: See response to comment No. 1. Although DPR uses field dissipation study and drinking water monitoring results to help determine whether a pesticide should be registered or to prioritize monitoring of pesticides listed in section 6800(b), these results do not meet the legal requirements specified in the FAC for identifying pesticides to be placed in section 6800(b). Since 2,4-D dimethylamine salt continues to meet the requirements for inclusion in section 6800(b), there is no basis for its removal.

Comment No. 4 (commentor # 4): DPR should include other specified chemicals on the “list of groundwater contaminants,” including glyphosate, mecoprop, 2,4-dichloropenoxyacetic acid (2,4-D), all organophosphates and all organophosphorus compounds, all permethrin/pyrethroids, urea, dicamba, mecoprop-P, and diazinon.

Response: This rulemaking proposes to add pesticide active ingredients to section 6800(b), which is a list of pesticides with the potential to pollute ground water, not a “list of groundwater contaminants.”

Mecoprop, permethrin, and the pyrethroids do not exceed the specific numerical values (SNVs) and, thus, do not qualify for listing in section 6800(b). None of the labels of glyphosate, 2,4-D, dicamba, and mecoprop-P contain language that state (1) the pesticide is intended to be applied to, or injected into, the soil by ground-based application equipment or by chemigation or (2) the pesticide requires or recommends that the application be followed within 72 hours by flood or furrow irrigation. Some organophosphate (organophosphorus) pesticides are currently listed in section 6800(b) and some are proposed to be listed. All other organophosphate pesticides either do not exceed the SNVs or do not contain the qualifying language mentioned above. Urea is not contained in any registered pesticides in California, and diazinon is already listed in section 6800(b).

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts requiring reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a “new program or higher level of service of an existing program” within the meaning of section 6 of Article XIII B of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from this regulatory action.

ALTERNATIVES DETERMINATION

The Director has determined that no alternative considered by DPR would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory change.

POSTING REQUIREMENT

3 CCR, section 6110, states in part that, “The public report shall be posted on the official bulletin boards of the Department, and of each commissioner's office, and in each District office of the DPR [Division of Pest Management, Environmental Protection and Worker Safety] for 45 days.” DPR has posted its Initial Statement of Reasons and Public Report on its official bulletin board, which consists of the Department's Internet Home Page <<http://www.cdpr.ca.gov>>. In addition, copies were provided to the offices listed above for posting.